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RECENT AMERICAN DECISIONS.

In the Supreme Court of Pennsylvania, Eastern District, January Term, 1860.

KAY vs. SCATES.

1. When a cestui que trust is sui juris, and invested with the entire beneficial interest, the use is executed, and he takes a legal estate corresponding with the beneficial estate in quantity, irrespective of the testator's intention; although the trustees are directed to invest in real estate, to keep insured, and to receive the rents and pay to cestui que trust. In England such duties would require that the legal seisin should remain in the trustees.
2. A trust is not to be sustained because it is for the sole and separate use of a feme sole, who was unmarried when the will took effect, and there being, at that time, no marriage in immediate contemplation.
3. A trust is special, and will not be considered executed until the time at which the full beneficial enjoyment of the interest devised shall vest, which may be postponed until after the cestui que trust attains majority.
4. The word "issue," in a will, is a word of limitation, which may, however, by words of distribution among the issue, and by words of superadded limitation, give rise to a presumption of a different intention in the testator.
5. The words "die without issue," "in default of issue," "for want of issue," "on failure of issue," or "die without leaving issue," import an indefinite failure of issue, from which, after a devise to one for life, an estate tail will be implied.
6. Although in *Rush vs. Lewis* and *Kuhn vs. Newman*, the Court refused to decree a conveyance from the nominal trustee, yet when the nominal trust beclouds the title and embarrasses the rights of alienation, a conveyance will be decreed in accordance with the practice of Courts of Chancery.

Upon a certificate from Mr. Justice Strong, at the Nisi Prius in Philadelphia, the case was thus :

James Kay, on the 8th day of November, 1853, made his last will and testament, and he having died, it was subsequently, to wit, 26th April, 1856, duly proved, when letters testamentary were granted to the respondents. The part of the will material to this case is in these words :

"Second. I will that all my property be converted into money as speedily as may be convenient, and after five thousand dollars shall have been deducted therefrom, that the residue of the said money be divided into three equal shares, and that each share thereof be invested in unincumbered, productive, well-built, and

improving real estate (preferably stores, and to be perpetually and sufficiently insured) in the city of Philadelphia, or incorporated districts immediately contiguous to it, in the names of the two hereinafter mentioned trustees, and one share thereof shall be for the sole benefit and use of my son James Alfred, and one share thereof shall be for the sole benefit and use of my daughter Hannah, and the remaining share thereof shall be for the sole benefit and use of my daughter Mary. And so soon as my son James Alfred shall have attained his twenty-fifth year, the said trustees shall pay to him during his life, in quarterly instalments, the income of the aforesaid real estate purchased for his benefit, and his receipt, and his receipt alone, shall be the only sufficient discharge therefor: and he shall have the right to bequeath the said real estate to any the issue of his body, who also shall succeed to it if he die intestate; and if he die leaving no issue of his body, the said real estate shall fall to my heirs-at-law by consanguinity. And so soon as my daughter Hannah shall have attained her twenty-fifth year, the said trustees shall pay to her during her life, in quarterly instalments, the income of the aforesaid real estate purchased for her use and benefit, which shall not be subject to the control of any husband, present or future, whom she may have or take, nor liable for the debts, contracts, or engagements of any such husband or husbands, and her receipt, and her receipt alone, whether she be married or single, shall be the only sufficient discharge therefor; and she shall have the right to bequeath the said real estate to any the issue of her body, who shall also succeed to it if she die intestate: and if she die leaving no issue of her body, the said real estate shall fall to my heirs-at-law by consanguinity. And so soon as my daughter Mary shall have attained her twenty-fifth year, the said trustees shall pay to her, during her life, in quarterly instalments, the income of the aforesaid real estate purchased for her use and benefit, which shall not be subject to the control of any husband, present or future, whom she may have or take, nor liable for the debts, contracts, or engagements of any such husband or husbands, and her receipt, and her receipt alone, whether she be married or single, shall be the only sufficient discharge therefor; and she shall have the right to bequeath the said real estate to any the issue of her body, who also shall succeed to it, if she die intestate: and if she die leaving no issue of her body, the said real estate shall fall to my heirs-at-law by consanguinity. Provided, that any share of the aforesaid real estate, the benefit and use of which may fall, by survivorship, to any one or more of my children, shall continue to be held by the trustees, to pay during life, the income thereof, in quarterly instalments, to the child or children entitled thereto, and that the said real estate thus received by survivorship, shall be subject to the same provisions and conditions hereinbefore made in the case, and as if it had been a part of the original share hereinbefore by me directly bequeathed for the benefit and use of the said surviving child or children; and provided, that until my children shall respectively attain the twenty-fifth year of his or her age, the trustees shall allow to each of them, from his or her income, such money for his or her support and education as they may think proper and expedient, and that they shall invest the surplus in real estate, which shall be considered and used, and be subject to the same provisions

and conditions as if it were a part of the original patrimony bequeathed by me, directly to be invested in real estate, for the benefit and use of each of my children, namely, to pay to each of them entitled thereto, the income during life, of such surplus so invested in real estate, and so forth, as hereinbefore provided."

"Third. And the five thousand dollars set apart, as hereinbefore provided, with its increase, I bequeath to my son James Alfred, to be paid to him when he shall have attained the twenty-fifth year of his age, that he may use the same as capital in business, or in such other manner as may seem good to him."

On the 31st December, 1859, J. Alfred Kay, Wm. H. Furness, Jr., and Hannah his wife, (formerly Hannah Kay;) and Mary Kay, brought their bill in equity against Charles W. Scates and Edwin R. Cope, executors under the last will and testament of James Kay, deceased, setting forth the devise to each of the testator's children, (the complainants) the trust imposed therein, the respective ages of J. Alfred Kay, Hannah Furness, (late Hannah Kay,) and Mary Kay, to wit: 25, 23, and 21 years, the intermarriage of Hannah Kay, since the testator's death, with Wm. H. Furness, Jr.; the direction that the defendants should sell, and invest the moneys realized from such sales in real estate, to be held in trust for the benefit of the complainants, as set forth in the will; the action of the defendants in pursuance of such direction, and the prayer of the complainants that the Court would compel the defendants to convey the legal title to the real estate aforesaid to the complainants, in equal portions.

The defendants, in their answer, admitted the facts set forth in the said bill, and stated that they had not completely settled the estate, that one account had been filed, been before an auditor, and duly confirmed. The manner and amount of their investments were shown. The respondents further stated that they were advised that the complainants had but a life estate in the said real estate, with a power of appointment; and that the trust should be enforced, the intention of the testator sustained, and prayed that the complainants' bill be dismissed.

The case was submitted upon bill and answer, at Nisi Prius, before Mr. Justice Strong, who made the following decree:

"And now, to wit, January 10th, 1860, it is ordered that the prayer of the complainants be denied, and that their bill be dismissed."

Whereupon the complainants asked for an order to certify the proceedings to the Court in banc, and assigned for error the decree of the learned Judge.

Hopper, for complainants.

The trust contained in the will is not a special trust, which the statute of uses does not affect, but a trust general, upon which the statute executes the possession.

Where the entire beneficial interest is given to the cestui que trust, in Pennsylvania the trust will not be considered a trust special, unless there is some legal disability in the cestui que trust.

The trust must support a lawful interest beyond that held and enjoyed by the cestui que trust, and as a consequence, the trustee must have such a duty to perform as can only be done by the legal seisin remaining in him.

The entire beneficial interest having been given to J. Alfred Kay, the trust in his favor, after his attaining the age of twenty-five years, becomes a legal interest, there being no disability requiring protection. *Smith vs. Starr*, 3 Whar. 62; *Hammersly vs. Smith*, 4 Whar. 126; *Nash vs. Nash*, 3 Barn. & Adol. 839; *Kuhn vs. Newman*, 2 Casey, 227; *Bush's Appeal*, 9 Casey, 85. The attempted limitation for life is an estate of the same nature as that limited over; they are both legal, and will unite by the rule in *Shelley's Case*, 2 Jarman, 244; *Pratt vs. McCawley*, 8 Harris, 264; *Hileman vs. Bonslaugh*, 1 Harris, 344. The limitation over is to *issue of the body*, which, in their first and ordinary meaning, are words of limitation. 2 Jarman, 235; *Middleworth vs. Collins*, 1 Phil. Rep. 139; *Haines vs. Witmer*, 2 Yates, 400; *Eichelberger vs. Barnitz*, 9 W. 450; *Clark vs. Baker*, 3 S. & R. 477. The case in 1 Co. 66, *Archer's Case*, is not applicable; there the issue were, by other words, made the root of a new inheritance. The power of appointment will not defeat the application of the rule in *Shelley's Case*, 2 Crabbe on Real Estate, 34; *King vs. Melling*, 1 Ven. 214; *Carter vs. McMichael*, 10 S. & R. 429.

The cases of *Reese vs. Steel*, 2 Sim. 233; *Robinson vs. Robinson*, 1 Burr, 38; and *Paxon vs. Lefferts*, 3 Rawle, 59; contain

the principle applicable to the case here, and decide that the estate of the devisees is an estate in fee simple. *Clark vs. Barker*, 3 S. & R. 470, is to the same effect.

The estate tail is, by the act of 1855, enlarged to an estate in fee simple.

If the devises were taken to be estates for the life of the children only, with remainder to the issue as purchasers, which, in the present case, would be contingent remainders, the children having also the fee simple title by descent, they could by deed make conveyances in fee simple, in which case the two estates would not open to let in the contingent remainders. *Stewart vs. Kenower*, 7 W. & S. 288; *Bennett vs. Morris*, 5 Rawle, 9; 2 Jarman, 245, 246; *Nash vs. Nash*, before cited. The reasoning is alike applicable to each of the shares.

Naglee's Appeal, 9 Casey, 89, is an authority that a deed from the trustees would be proper.

Pancoast, for respondents.

It is clearly the intention of the testator that complainant should only take a life estate. The words superadded are words of purchase, and not words of limitation; and by the words of the will, "any the issue of his body," an indefinite succession of lineal descendants is not meant. The word "issue" is ambiguous in a will, and does not imply in itself the idea of inheriting. *Earl of Oxford vs. Churchill*, 3 Ves. & Bea. 67. There is a less degree of presumption against construing the word "issue," than the words "heirs of the body," to be words of purchase. Smith on Ex. Interests, § 525.

The words "any the issue of his body," are first used by the testator to describe those among whom the donee has the power to appoint. They must be held here to describe a class among whom the appointment is to be made, and must be living in the lifetime of the donee. Sug. on Powers, 475; *Hockey vs. Mawley*, 1 Ves. Jr. 143, and note 4 to p. 152; *Paul vs. Compton*, 8 Ves. 380. The same words are used to describe those to take in default of appointment, and they must be taken to have the same meaning,

there being nothing in the will from which a different meaning can be inferred. 2 Jar. on Wills, 527.

Besides, this is the most simple and natural meaning. S. & R. 155. If the devise was on an indefinite failure of issue, it must equally limit the estate to be taken under it, as in default of appointment it involves the improbable construction that the testator intended the real estate to be appointed to any of the issue, their heirs and assigns, with the condition that they should hold so long as any of the issue of the donee should be in existence. If he did not intend this, then he did not mean an indefinite failure of issue, and the proper construction is that complainants take life estates, with powers of appointment to any of their issue living at their deaths, in fee, who, in default of appointment, take among them in fee, and if there be no issue living at the death of donee, then over. Smith on Ex. Dev. ss. 527, 530; *Hockley vs. Mawbey*, 3 B. C. R. 82, (Perkins' Ed. 73, note a;) *Suddington vs. Kime*, 1 Ld. Raym. 203; *Abbot et al. vs. Jenkins*, 10 S. & R. 298; *Dunwoodie vs. Reid*, 3 S. & R. 470; *Greenwood vs. Rothwell*, 5 Mann and Gr. 628; 5 S. & R. 99; *Findley vs. Riddle*, 3 Binn. 139.

II. The testator directs the defendants to convert the whole of his estate to realty, to keep the same sufficiently insured, receive the rents, and pay over to the complainants what they, the trustees, deem sufficient for support and education, until they are twenty-five; all of which cannot be done unless the legal estate is in them. There is a distinction between trusts to receive and pay over, and trusts to permit the cestui que trust to receive—the first are not executed. *Symons vs. Turner*, Eq. Ca. Abr. 383; *White vs. Parker*, 1 Bing. New Cases, 573. In *Rush vs. Lewis*, 21 St. Rep., the trust was to receive and pay the income to the daughters, not subject to the debts of any husband they might *thereafter* marry, and Black, C. J., held that if it had not been made the duty of the trustees to receive and pay, they would not have had the estate.

The direction that the receipts of the cestuis que trust alone shall be the only sufficient discharge, shows an intention to secure for their exclusive enjoyment the income.

The intention is a legal one; and to effectuate it, the trust will be protected. *Fisher vs. Taylor*, 2 Rawle, 33; *Holdship vs. Patterson*, 7 Watts, 551; *Vaux vs. Parke*, 7 W. & S. 19; *Ashurst vs. Given*, 5 W. & S. 328; *Sylvester vs. Wilson*, 2 Term R. 444.

The opinion of the Court was delivered by

STRONG, J.—If the estate devised for life to J. Alfred Kay, and the other complainants, be only equitable, while the remainder given to the issue of the bodies of each is legal, the prayer of the bill must be denied. There is, then, no ground for the application of the rule in *Shelley's case*. The first question, therefore, presented by the record is, whether the legal estate is vested in the defendants who are the trustees named in the will of the testator, or whether it has passed to the beneficial devisees. The will directs that the trustees shall invest the property given in real estate, in their own names, which has been done. It directs that the property shall be kept perpetually and sufficiently insured, and that, on the attainment of the age of twenty-five years by James Alfred Kay, the trustees shall pay to him, during his life, in quarterly instalments, the income of the said real estate purchased for his benefit; and it declares that his receipt, and his receipt alone, shall be their only sufficient discharge therefor. James Alfred Kay, one of the complainants, has attained the age of twenty-five. As to him, the discretion given to the defendants to allow to each of the complainants, from his or her income, such money for his or her support and education as they may think proper and expedient, and the direction to invest the surplus for his benefit, have expired. The duty of the trustees now, therefore, is to pay over, quarterly, the whole income, taking his receipt. Have they, then, any duty imposed upon them which requires that they should continue invested with the legal estate? If the case were to be decided according to the doctrine of the English courts, it cannot be doubted that they have. There the rule appears to be well established, that when there is a gift of real estate to trustees, with a direction to convey, or to pay the rents and profits to certain persons, or to receive the rents and apply them for the maintenance of an individual during his life, or to pay

an annuity out of the rents during his life, the seisin or possession of the legal estate is requisite for the due performance of the duty imposed upon the trustees, and consequently, that the persons to whom the use is subsequently given take only an equitable estate. Such interests are not held as mere dry trusts, to be disregarded, and considered executed in the person to whom the beneficial interest is given. To sustain a dry trust, there must have been some special lawful trust expressed, but not so where the trustee has active duties to perform. From the case of *Lord Say and Seal vs. Jones*, 1 Eq. Ca. Ab. 383, to the present time, it has been held that there is a distinction between a devise to trustees to pay the rents, issues, and profits, and a devise to them to permit the beneficial donee to receive such rents, or generally in trust for the beneficial donee. Hill, in his Treatise on Trustees, has collected many cases in which the doctrine has been asserted, (page 232.) Jarman, also, has collected a large number, from which he deduces the rule, that where property is devised to A and his heirs, the question whether A does or does not take the legal estate, depends chiefly on the fact whether the testator has imposed upon him any duty or trust, the performance of which requires that the estate should be vested in him; and it has been held, and is still held, that though nothing be required of the trustee but to pay over the rents, that is sufficient. Thus in *Doe, ex dem, Leicester*, 2 Taunt. 109, a distinction was drawn between a devise to a trustee to pay over the rents, and a devise to permit the *cestui que trust* to receive them; the legal estate in the former case being held to be in the trustee, and in the latter in the beneficial owner. In 6 Ad. & Ellis, 206, *Doe, ex dem. Gratrex et al. vs. Homfray*, there was a devise to the use, that certain persons named should and might take and receive the rents, issues, and profits, and pay the same to the testator's son, for and during his natural life; and from and after the decease of the son, the testator devised the premises to the heirs of the body of the son, with remainders over in default of such heirs of the body. It was held that a legal estate passed to the persons empowered to receive and pay the rents during the life of the son. Lord Denman said the case fell within the numerous class where it

has been held that a devise to trustees to pay over the rents vests the estate in such trustees. That the devise is not directly to the trustees, but to the use and intent that they may receive, &c., appears to us to make no difference, nor the absence of a devise to trustees to preserve contingent remainders. He added, "It was observed that the will required nothing to be done by the trustees, and it is true nothing is to be done but paying; but this has been held to be sufficient, and must be taken to be the present law." And even where a trust to permit and suffer the testator's wife to receive the rents during her widowhood, was followed by a direction that her receipts, with the approbation of any one of the trustees, should be good and valid, it was held that the legal estate was vested in the trustees, and this because the testator contemplated that they should approve the receipts given by the *cestui que trust*.

Neither in England nor in this State will a mere dry trust be sustained, when the person equitably entitled to any property takes absolutely the entire beneficial interest, and the trustee has no duty to perform, unless it be a special trust, intended to accomplish some object, such as to preserve contingent remainders, or to protect property for the sole and separate use of a married woman, or from the creditors of the *cestui que trust*. But some recent Pennsylvania cases have held that our law strikes down trusts which are valid in England, treats them as executed, and regards the legal estate as vested in the *cestui que trust*. Of this class, *Kuhn vs. Newman*, 2 Casey, 227, is the leading one, and perhaps the first. *Rush vs. Lewis*, 9 Harris, 72, and *Steacy vs. Rice*, 3 Casey, 75, are in perfect harmony with the decisions in the mother country. In the first of these there was a devise to executors in trust to pay the rents, issues, and profits, to the testator's daughter, during her life, for her sole and separate use; and after her death, for the use of such persons as she might appoint by will, and in default of appointment, to and for the use of her children. After the death of the daughter, the legal estate was held to be vested in her appointee. Here, after the termination of the special trust to pay the rents to the sole and separate use of the married daughter, there were no duties for the trustees to perform, and the purposes of the trust were satisfied.

Then the law struck it down. Indeed, it was intimated that the direction to pay the rents, issues, and profits, to the tenant for life, alone sustained the legal title in the trustees till her death, though the intimation overlooked the fact, that there was a special purpose in the creation of the trust, to wit: the preservation of the income for the separate use of a married woman. *Steacy vs. Rice* was very similar. There, also, the legal estate was not declared vested in the *cestui que trust*, until the special trust had terminated, and the trustees had ceased to have any active duties to perform. But *Kuhn vs. Newman* advances on the doctrine of these cases. There the trust was to hold for the separate use of a *feme covert* to permit her to take, receive, enjoy, expend, and dispose of the rents, issues, and profits, during her natural life; and after her death, in trust, to educate, maintain, and support her children, until their arrival respectively to the age of twenty-one years, then in trust for the sole and separate use of such children, subject as to the income thereof to their own free and absolute disposal. Until the children arrived at the age of twenty-one, the trustees were required to educate, maintain, and support them; after that time, they had no duties to perform; and even in England, the legal estate would then have vested in them. But the Court held that it so vested, even before their arrival at the age of twenty-one, notwithstanding the duty imposed upon the trustees. They declared that "our common law takes a higher position than English common law or English equity; that in relation to titles to lands, it does so by adopting the forms of both as legal forms, and treating all complete equitable titles as complete legal ones, where the persons named as trustees have no duty to perform that requires the seisin and possession to be in them; and then our common law enforces the trust as a legal estate," "even those uses that were not executed by the statute, (of uses,) for example, those that are limited against the rules of the common law; 1 Rep. 129, (b;) a use limited upon a use, a use of chattels real, and a trust to receive rents and pay them to another; 2 Black. Com. 335; all these are executed by our principle." The case in effect denies the possibility of creating in this State any other than technically special trusts. Thus it is said that "trusts

properly so called are uses that our law does not execute as legal estates, because of circumstances that take them out of the ordinary course of legal administration, and place them under a special guardianship of the Court; but this is not generally allowed in favor of individual persons who have full competency to act in their own right. A fee simple in them is treated as such, whether assured in a legal or equitable form. In other words, persons who are *sui juris* men or women, must be satisfied with the ordinary remedies and protection of the law." And, finally, it is held that a trust to educate and maintain children until they arrive at age, does not furnish a legitimate reason for preserving the trust from being executed in the beneficiary. The case was decided by an unanimous Court. I understand it as denying the possible existence of any such trust as the testator in this case has attempted to set up in favor of the complainants. It declares them to be the holders of the legal estate; *Bush's Appeal*, 9 Casey, 85, substantially reasserts the doctrine of *Kuhn vs. Newman*. There the *cestui que trust* was a *feme covert*, it is true, but the gift was not declared to be for her separate use. The trustee was ordered to receive the legacy, put it at interest, and pay the interest yearly to the testator's daughter during her natural life, and the principal, after her death, to her heirs, share and share alike, in equal parts. The trustee's duty, it will be observed, was to invest and pay the interest yearly during life. This Court held that no trust existed after the death of her husband. The actual duties imposed upon the trustee were not sufficient to keep alive the trust, and it was therefore treated as executed in the *cestui que trust*. *Kuhn vs. Newman* and *Bush's Appeal* govern the present case. The complainants are all *sui juris*. The duties imposed upon the respondents as trustees, are neither greater, no more require the seisin to remain in them, than the duties of the trustees in those cases. Nor is the nature of the duties different. The trustees are to pay the income quarterly, and are to be discharged only by the receipts of the complainant. The entire beneficial interest is in the *cestuis que trust*. It is true that two of the complainants have not yet arrived at the age of twenty-five, and until then the testator has postponed their full enjoyment of the

income of the property. Until then, a discretion is given to the trustees to determine what amount they shall receive. The full right to a present beneficial enjoyment is not yet theirs. But when they shall reach that age, they will stand in the same position with their brother, the other complainant. It need not be said that a trust is to be sustained, because the gift is for their sole and separate use. They were unmarried when the will took effect, and no marriage was immediately contemplated; *Smith vs. Starr*, 3 Whar. 67. But the right of the respondents to control the amount which they may enjoy until they reach the age of twenty-five, will postpone the execution of the trust until that time. The trust could not be discharged under the direction of the Orphans' Court, after they arrive at majority, and therefore there is a reason for its continuance, that did not exist in *Kuhn vs. Newman*. But J. Alfred Kay has attained to the age of twenty-five, when, by the directions of the will, the whole of the income of the property devised is to be paid to him. Under the rule asserted in *Kuhn vs. Newman* and *Bush's Appeal*, his has, therefore, become a legal estate, as is the remainder limited after his decease. Considering them, both the particular estate for life, and the remainder as legal, the limitations of the will are to J. Alfred Kay for life, with a power of appointment among any of the issue of his body, and in default of appointment, to such issue; and if he die, leaving no issue of his body, then over. That this created an estate tail in the first taker, admits of no doubt. The word issue, in a will, is primarily a word of limitation. When used by a testator, the legal presumption is, that he intended a limitation, not that the remainder-men should take as purchasers. Nor is there anything in this will that indicates an intention of the testator that the word issue should have any other than its primary signification. There are not even words of distribution among the issue. Nor are there any words of superadded limitation. And there is a gift over, if the tenant for life die, leaving no issue of his body. That this means an indefinite failure of issue, need not be argued. The subject of the gift is money laid out in land. It is, therefore, real estate, and in such cases, "die without issue," or "in default of issue," or "for want of issue," or "on failure of issue," or "die without leaving

issue," import the same thing, to wit: an indefinite failure of issue. An estate tail would, therefore, be implied from the devise over, even if there were no gift of a remainder directly to the issue as a class. And as estates tail are, by our Act of 1855, converted into estates in fee simple, it follows that J. Alfred Kay is the legal owner in fee simple of one-third of the property, and that the other complainants will be similar owners, when they shall respectively attain the age of twenty-five years.

No decree is at the present asked in favor of any other complainant than J. Alfred Kay, and we shall, therefore, only decree a conveyance to him. In *Rush vs. Lewis*, 9 Harris, 72, and in *Kuhn vs. Newman*, this Court refused to decree a conveyance from the nominal trustee, in cases where the legal estate was held to be executed in the *cestui que trust* by force of law, on the ground that there was no necessity for it. Yet the nominal trust beclouds the title, and embarrasses the rights of alienation, which belong to the true owner. We think it, therefore, better to decree a conveyance, and such is the practice of Courts of Chancery, where the purposes of a trust once existing, have been accomplished.

Decree reversed.

[The Court then decreed, that the defendants should by deed, duly executed and delivered, convey to J. Alfred Kay, in fee simple, one undivided one-third part of the real estate, and that the defendants transfer and pay to the said J. Alfred Kay one-third of the personal property in their hands, as executors or trustees, remaining after payment of debts, charges, and expenses of settling the estate; and it was further decreed, that the costs, charges, and expenses, of making and executing the said deed, be paid by the said J. Alfred Kay.

And it was further ordered, that Hannah K. Furness and Mary Kay have liberty to apply to the Court for further relief and order in their behalf, severally, when each shall arrive at the age of twenty-five years.]